

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CAROL DOUGHERTY,	:	CIVIL ACTION - LAW
Plaintiff	:	JURY TRIAL DEMANDED
	:	
v.	:	NO. 1:04-cv-01682-YK
	:	(Judge Kane)
CIBER, INC.,	:	(Electronically filed)
Defendant	:	

PLAINTIFF'S PRETRIAL MEMORANDUM

The Local Rule 16.3 conference between counsel was held on August 4, 2005, at 1:30 p.m., at 132 State Street, Harrisburg, Pennsylvania.

A. FEDERAL COURT JURISDICTION:

29 U.S.C.A. §216(b) and 28 U.S.C.A. §1337.

B. SUMMARY STATEMENT OF FACTS:

The Plaintiff, Carol Dougherty, was employed by Ciber, Inc. as its Human Resources Manager of Ciber's Harrisburg branch office. On Thursday, October 23, 2003, Ms. Dougherty reported to Ann Griffiths, a Ciber Vice President and Regional Manager, that Ciber was violating the Fair Labor Standards Act by the way it was classifying certain staff in the Harrisburg office to evade paying them overtime. On the following day, because of that report and a concern that Ms. Dougherty would be making further reports, Regional Vice President Ann Griffiths terminated Carol Dougherty from her employment.

As a result of this unlawful retaliatory discharge, Carol Dougherty was rendered unemployed for a short period of time, underemployed through August of 2004 and, although working two jobs since then, continues to suffer some loss of wages and benefits.

C. STATEMENT OF UNDISPUTED FACTS:

On September 27, 1999, Ciber, Inc. hired Carol Dougherty for the position of Office Manager of Ciber's Harrisburg branch.

Effective January 6, 2003, Carol Dougherty was transferred from the position of Office Manager into the just created position of Human Resources Manager of Ciber's Harrisburg Branch Office, in which capacity she reported to Ann Griffiths, then a Ciber Vice President who also worked out of the Harrisburg Branch Office.

On October 10, 2003, Carol Dougherty received her fourth annual performance appraisal from Ann Griffiths.

Carol Dougherty was out of the office, taking vacation leave, from Monday, October 13, 2003 through Friday, October 17, 2003. Carol Dougherty was also out of the office on Monday and Tuesday, October 20 and 21, 2003, in order to attend a seminar regarding federal and state wage and hour laws, including the federal Fair Labor Standards Act.

On Thursday, October 23, 2003, Carol Dougherty attended a meeting with a number of senior Ciber management employees,

including Edward Burns, Ciber Regional Manager, Ann Griffiths, Philip Gring, Vice President for Business Development for the Harrisburg Branch, Scott Frock, Ciber's Harrisburg Branch Operations Manager, and Terry Heistand, Office Manager for the Harrisburg Branch.

In the morning of October 24, 2003, Ann Griffiths terminated employment of Carol Dougherty. Mrs. Dougherty's annual salary at the time of her termination was \$55,910.46.

D. SUMMARY OF DAMAGES:

DAMAGE CALCULATIONS THRU 7/31/05¹

(Based on Ciber salary of \$55,910.40)

Wage Losses

Nov-Dec 2003	\$9,318.40	
	<u>-\$944.00</u> (Boscov's earnings)	= \$ 8,374.40
2004	\$55,910.40	
	<u>-\$26,117.00</u> (Boscov's/Saidis earnings)	= \$29,793.40
7/31/05	\$32,614.40	
	<u>-\$29,007.68</u> (Boscov's/Saidis earnings)	= \$ 3,606.72
Quarterly bonuses @ \$600.00 avg.		\$ 4,200.00
Fringe benefits (premiums/copays)		<u>\$ 4,900.82</u>
Wage/fringe less thru 7/31/05		\$50,875.34
Tax penalty on \$29,500 401k withdrawals		\$ 2,950.00
Attorneys fees and costs thru 7/31/05		<u>\$29,888.94</u>
		<u>\$83,714.28</u>

Ongoing lost wages/fringes at \$9,600 per year.

Further, aside from the remedy of reinstatement, in retaliation claims, under 29 U.S.C. §216(b), an award of liquidated damages equal to lost wages is mandatory.

E. WITNESSES:

¹ Damage calculation will be updated through 8/31/05 for trial.

Ann Griffiths, Scott Frock, Phil Gring, and Plaintiff, Carol Dougherty. Ms. Griffiths and Mr. Frock continue to work for Ciber and defense counsel has agreed that they will appear without subpoena. Phil Gring resides at 4 Winchester Ct., Mechanicsburg, Pennsylvania 17050, and will be subpoenaed.

F. EXPERT WITNESSES:

None.

G. SPECIAL COMMENT ABOUT PLEADINGS AND DISCOVERY:

None.

H. SUMMARY OF LEGAL ISSUES:

The pertinent legal issues have already been briefed by the parties in Defendant's Motion to Dismiss and Motion for Summary Judgment.

I. STIPULATIONS DESIRED:

Plaintiff is still hopeful that Defendant will stipulate to the details of Plaintiff's damages, inasmuch as they are a simple function of the difference in earnings and fringe benefit coverages.

J. ESTIMATED NUMBER OF TRIAL DAYS:

2½.

K. ANY OTHER MATTER PERTINENT TO THE CASE TO BE TRIED:

None. The court has not yet ruled on Defendant's Motion for Summary Judgment. Also, on August 15, 2005, the Defendant made a motion to bifurcate the damages portion of the trial, which Plaintiff opposes and will be filing a separate response thereto in short course.

L. ATTACHED HERETO IS PLAINTIFF'S SCHEDULE OF EXHIBITS.

M. SPECIAL VERDICT QUESTIONS:

None.

N. L.R. 30.10 CERTIFICATE:

Not applicable.

Respectfully submitted,

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I, the undersigned, certify that I have this day served a true and correct copy of the foregoing electronically and by first class mail, postage prepaid, on the following person(s) :

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Respectfully submitted,

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Date: August 22, 2005